

**Remarks**

**Status of Claims**

Claims 1-12 are pending. Claims 1-9 are directed to non-elected embodiments and have been withdrawn. Claims 10-12 stand rejected.

**Interview**

The Applicant gratefully acknowledges the interview granted to the undersigned Attorney on December 17, 2009 wherein claim 10 and ways to overcome the prior art were discussed. While the undersigned Attorney has attempted to capture the essence of the agreement reached with the amendments presented here, if the Examiner believes that there is any discrepancy between these amendments and the agreement reached, he is invited to call the undersigned Attorney to expeditiously advance prosecution of the Application.

**Election**

The undersigned Attorney for the Applicant hereby affirms the telephonic election to Group V, claims 10-12 made on August 13, 2009. The election is made without traverse and claims 1-9 are hereby withdrawn.

**Rejections**

**Rejection Under 35 U.S.C. § 112**

Claim 10 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. More specifically, the Examiner asserts that “the rotating magnet within the impellor” lacks antecedent

basis. The claim has been amended to recite “a magnet” to address the rejection. Reconsideration is requested.

### **Rejections Under 35 U.S.C. § 103(a)**

Claims 10-12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Mault et al. (6,468,222), hereinafter referred to as ‘222, in view of Mault (2002/0061495), hereinafter referred to as ‘495. These references were discussed in the interview and it was agreed that the combination does not teach nor suggest certain structural elements of the mouthpiece and fluid channel. Most significantly, the location of the rapid thermometer probe is neither taught nor suggested by the references. In fact, ‘222 teaches away from the claimed probe by suggesting it be placed in the fluid channel instead of in the mouthpiece for insertion into the user’s mouth to measure BMT. Claim 10 has been amended utilizing language suggested by Examiner Johnson to more clearly recite those elements, namely that the probes are positioned in a sublingual location in the mouth. Also, a recitation that the mouthpiece is positioned in line with the fluid channel has been added. It was agreed that neither of references cited teach or suggest these features in combination with the remaining features of claim 10. Reconsideration and allowance of claims 10-12 is therefore requested.

### **New claims**

New claims 13-20 are submitted for examination. Claim 13 depends from claim 10 which is believed to be allowable for the reasons discussed above. Claims 14-20 are believed to be patentable because the references of record do not teach nor suggest an apparatus having the combination of a mouthpiece configured to be placed in a user’s mouth; a fluid channel

extending in a plane defined by a straight path from the mouthpiece to an exit; an impellor disposed in the fluid channel; a rotating magnet coupled to the impellor; a field-effect transistor sensing the rotating magnet and counting the number of rotations per second of the impellor; a rapid thermometer probe with a metallic tip disposed in the mouthpiece and measuring basal metabolic temperature in the user's mouth; and, a second probe with a metallic tip disposed in the mouthpiece and measuring saliva acidity in the user's mouth; wherein both probes are located in the mouthpiece to accurately position them in opposing lateral sublingual positions in the user's mouth. Consideration and allowance of these new claims is requested.

### **Conclusion**

For all of the foregoing reasons, Applicants respectfully contend that the application is now in condition for allowance. Accordingly, Applicants respectfully request entry of the new dependent claims 13- 20, reconsideration and allowance of claims 10-12, and issuance of a Patent for the subject invention. If the Examiner cares to discuss anything presented here to further prosecution of this application, he is invited to contact the undersigned Attorney for the Applicant. Please charge any additional requisite fees relating to this amendment and response to Deposit Account No. 501581.

Respectfully submitted,

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